**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 2409 of 1996**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE JAYANT PATEL**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**NAJKUNVARBHAI CHAPRAJBHAI & 2 - Petitioner(s)**
**Versus**
**MAMLATDAR AND ALT & 1 - Respondent(s)**

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**Appearance :**
MR JA ADESHRA for Petitioner(s) : 1 - 3.
MR SATYAM CHHAYA, AGP for Respondent(s) : 1 - 2.

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**CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL**

**Date : 21/03/2007**

**ORAL JUDGMENT**

1. The short facts of the case are that as per the petitioners, the petitioners were holding various parcels of the agricultural land,

including the land situated at Village Dhoba, Taluka Savarkundla. As per the petitioners, since the lands were in excess of the ceiling area under the Gujarat Agricultural Land Ceiling Act (hereinafter referred to as “the Act”), the case was registered qua the petitioners vide Ceiling Case No.438 and No.439 and the land admeasuring 43 acres and 17 gunthas together with the other lands were declared as excess lands. It is not in dispute that the matters were carried before the Tribunal and the Tribunal also confirmed the position that the land admeasuring 43 acres and 17 gunthas is a surplus land to be acquired by the Government. However, as per the petitioners, the land could be acquired after giving opportunity of selection since the Tribunal ordered accordingly. It appears that Special Civil Application No.524 of 1992 was also preferred against the decision of the Tribunal and vide order dated 27.1.1992 the Special Civil Application was dismissed. It appears that the Dy. Collector passed the order on 29.9.1992 for

allotment of the land bearing Survey No.290/1 at Village Dhoba together with the other land admeasuring 49 acres and 29 gunthas to one Savarkundla Taluka Anusuchit Jati Sanyakt Khet Sahkari Mandali and it is under these circumstances the petitioners have approached this Court by preferring the present petition.

2. I have heard Mr.Adeshra, learned Counsel for the petitioners and Mr.Chhaya, learned AGP for the State authorities.

3. It deserves to be recorded that the document, which is produced at Annexure “E”, which is impugned in this petition, is not reflecting the correct typed copy inasmuch as the lands, which are proposed to be allotted by the impugned order vide Item No.1 is at Village Bhokarva and not Khoderva as typed in the Annexure “E” and the correct Survey number is No.94 Paiki and not No.84 paiki as typed. Even for Item No.2, the name of the Village is Senjal, whereas it is wrongly typed as Gunja and the correct area of the land bearing Survey No.24 admeasuring 27 acres and 03 gunthas, whereas it is wrongly

typed as 20 acres and 3 gunthas. There are two lands of Village Senjal. The land of Village Dhoba, which is the subject matter of the present petition, is wrongly typed as Dhokha and the correct Survey Number is No.290/1 Paiki, but is wrongly typed as Survey No.20/1 Paiki.

4. It may also be recorded that Mr.Chhaya, learned AGP during the course of the hearing has made available to the Court the true xerox copy of the original and the copy which is in possession of the learned Counsel appearing for the petitioner is also a xerox, but a totally illegible copy and, therefore, it appears that by ex-facie typographical error, the whole facts of the case are presented differently than actual as per the impugned order.

5. Be that as it may, from the perusal of the correct copy of the order dated 29.9.1992, which is taken on record read with the affidavit-in-reply filed, it appears that the principal contention raised on behalf of the petitioners is that the land admeasuring 43 acres and 17 gunthas at Village Dhoba bearing Survey No.290

Part is declared as surplus land and, therefore, the Government can at the most take possession of the said area, after giving choice for selection and not the land admeasuring 49 acres and 29 gunthas. Whereas, it is the case of the respondent authority that the land, which is included in the impugned order dated 29.9.1992 is not the land belonging to the petitioners, but is belonging to other legal heirs of Chaprajbhai Visamanbhai and so far as the land belonging to the petitioners is concerned, the order is already passed as back as in the year 31.12.1991, which includes the land at Village Dhoba bearing Survey No.290 Part admeasuring 43 acres and 17 gunthas and the said land is also allotted to the very society namely; Savarkundla Taluka Anusuchit Jati Sanyakt Khet Sahkari Mandali.

6. Mr.Chhaya, learned AGP has also placed on record the copy of the order dated 30.12.1991 passed concerning to the land belonging to the petitioners.

7. In above view of the matter, it appears that the

whole premise of the petitioners is ill-founded. As per the respondent authority the land belonging to the petitioners at Village Dhoba bearing Survey No.290 Part admeasuring 43 acres and 17 gunthas is allotted vide order dated 30.12.1991, which is, in any case, not the subject matter of the petition and the impugned order concerning to the land situated at the very Village bearing Survey No.290/1 admeasuring 49 acres and 29 gunthas is belonging to the heirs of deceased Chaprajbhai Visamanbhai and not the petitioners.

8. If the submissions of the respondent authorities are accepted as mentioned in the affidavit-in-reply read with the notice and the order, which are produced on record during the course of the hearing, it does appear that the whole petition is on a wrong premise and the challenge pertains to the land, which does not belong to the petitioners. Therefore, as the land of the petitioners bearing Survey No.290 admeasuring 43 acres and 17 gunthas is not included in the impugned order, no further observations may be

required.

9. Mr.Adeshra, learned Counsel appearing for the petitioners, however, submitted that with a view to allege the apprehension on the part of the petitioners of deprivation of the land belonging to the petitioners exceeding the area of 43 acres and 17 gunthas, which is declared as surplus land, this Court may issue suitable directions and, therefore, he submitted that the same would serve the purpose of the petitioners, whereas Mr.Chhaya, learned AGP for the State Authorities submitted that the stand of the respondent authorities is made clear by both the orders and the petitioners are not concerned with the land included in the impugned order.

10. Under the above circumstances, I find that if the aforesaid aspect is further clarified by the Dy. Collector, no serious prejudice will be caused.

11. Hence, I find that the following directions shall meet with the ends of justice:-

**(a)** The challenge to the impugned order

dated 29.9.1992 by the petitioners for allotment of the land bearing Survey No.290/1 admeasuring 49 acres and 29 gunthas, in view of the aforesaid clear stand of the respondent authority, is not accepted and hence, the said challenge fails. However, it is further directed that the respondent No.2 shall verify and ensure that the land admeasuring 43 acres and 17 gunthas bearing Survey No.290 at Village Dhoba, which is included in the order dated 30.12.1991 of the Dy. Collector vide Reference No.Jamin Vasi/3193/91 is only covered by the said order so far as it relates to holding of the petitioners and the petitioners are not deprived of the land exceeding the area of 43 acres and 17 gunthas bearing Survey No.290 Part at Village Dhoba, except to the extent of choice of retainable portion of 8 acres and 23 gunthas of Survey No.290 Part.

12.Subject to the aforesaid observations and directions, Rule discharged. I.R. vacated. No

order as to costs.

21.3.2007 **(Jayant Patel, J.)**

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